

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

<b>ePLUS INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 3:09-CV-620 (REP)</b>
	)	
<b>v.</b>	)	
	)	
<b>LAWSON SOFTWARE, INC.,</b>	)	
	)	
<b>Defendant.</b>	)	

**PLAINTIFF ePLUS INC.’S MOTION AND MEMORANDUM IN SUPPORT  
FOR LEAVE TO SERVE EXPEDITED DISCOVERY ON  
DEFENDANT LAWSON SOFTWARE, INC.**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff ePlus Inc. (“ePlus”) respectfully moves the Court for leave to serve three additional interrogatories (viz. ePlus’s Fifth Set of Interrogatories (Nos. 26-28), attached as Exh. A) on Defendant Lawson Software, Inc. (“Defendant”) and to expedite responses from Defendant to those interrogatories. ePlus requests this additional, expedited discovery because the interrogatories are directly relevant to ePlus’s request for injunctive relief against Defendant and the request is consistent with the Court’s order to the parties to update their discovery following trial on the issue of injunctive relief (*see* Exh. B, Trial Tr. 3364:11-19, Jan. 27, 2011).<sup>1</sup>

In the Final Pretrial Order, Defendant alleged – in its list of Factual Contentions for Issues to Be Tried To The Court – that ePlus was not entitled to an injunction because, among other things, (1) most if not all of Defendant’s marketing efforts are allegedly directed to

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<sup>1</sup> This cite refers to the trial-transcript pagination prior to any corrections made after February 1, 2011.

potential customers that *ePlus* has not solicited and (2) *ePlus* has allegedly never lost a sale to Lawson.

*ePlus* is entitled to pursue discovery from Defendant to rebut these allegations. Accordingly, *ePlus* has propounded three narrowly focused interrogatories directed at information concerning Defendant's contentions. The information *ePlus* seeks in its Fifth Set of Interrogatories is the same information that Defendant failed to provide during fact discovery in response to *ePlus* Interrogatory No. 24, namely, the customers or potential customers to whom Defendant has sold or *offered for sale* its infringing software systems. *ePlus* long ago moved to compel this discovery, and the Court has already ordered Defendant to provide this information. *See* Order (Dkt. No. 194, Mar. 30, 2011). Yet Defendant has still failed to comply.<sup>2</sup>

The schedule set for the injunction hearing requires *ePlus* to seek this information on an expedited basis. *ePlus* must submit its rebuttal evidence to be used at the evidentiary hearing on the injunction by February 21, 2011, and the evidentiary hearing itself will take place on March 3, 2011. Thus, *ePlus* does not have sufficient time to obtain this information from Defendant according to the standard 30-day period for responses provided by Federal Rule of Civil Procedure 33(b)(2). Rather, *ePlus* must receive the responses within the next several days in order to allow time for review and analysis before the February 21 deadline.

Defendant will suffer no undue burden in responding to these interrogatories according to the schedule requested by *ePlus*. These interrogatories seek only information regarding (1) the identity of the particular companies to which Defendant has directed its sales and marketing efforts for its infringing products and (2) the factual basis, if any, underlying allegations made by

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<sup>2</sup> The Court ruled during trial that *ePlus*'s motion to compel Defendant to respond to Interrogatory No. 24 was moot in light of Defendant's concession that it would not assert a defense to infringement based on any lack of proof regarding the implementation services that Defendant provides to its customers. *See* Exh. C, Trial Tr. 1497:11-

Defendant in the Amended Final Pretrial Order regarding the propriety of injunctive relief. As the interrogatories were served today, February 2, 2011, Defendant will have seven days to collect and provide this information.

*ePlus* therefore respectfully requests that the Court grant this motion and enter an Order permitting *ePlus* to serve its Fifth Set of Interrogatories and requiring Defendant to provide substantive responses to these interrogatories no later than Wednesday, February 9, 2011.

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19 (Jan. 13, 2011). While the motion is moot as to the issue of infringement, the information requested in Interrogatory No. 24 – and in *ePlus*'s Fifth Set of Interrogatories – is relevant to the issue of injunctive relief.

February 2, 2011

Respectfully submitted,

ePlus, Inc.

By Counsel

/s/

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of February, 2010, I will electronically file the foregoing

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with the Clerk of Court using the CM/ECF system which will then send a notification of such filing (NEF) via email to the following:

Daniel McDonald, *pro hac vice*  
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